Ivan-Ivan and Foodarama, Inc. d/b/a Foodarama *and* United Food and Commercial Workers Union, Local 698, AFL-CIO-CLC a/w United Food and Commercial Workers International Union, AFL-CIO-CLC. Cases 8-CA-13142, 8-CA-13885, and 8-CA-14280

February 12, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On September 28, 1981, Administrative Law Judge Philip P. McLeod issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Ivan-Ivan and Foodarama, Inc. d/b/a Foodarama, Canton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(b):

"(b) Remove and expunge from its records those individual employee files which record tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips, and which were instituted and maintained to discourage employees from selecting a union to represent them for purposes of collective bargaining."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] We agree with the Administrative Law Judge that Respondent violated the Act by implementing a new system of individual employee files recording information on employee tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips in order to discourage employee selection of a bargaining representative. The purpose of our remedial order is not to destroy valuable business records which Respondent is, in some instances, required by law to keep, but to direct that such records not be kept on an individual employee basis for the purpose of discouraging collective bargaining, as set forth by the Administrative Law Judge in his Conclusion of Law 3. We will modify par. 2(b) of the Administrative Law Judge's recommended Order accordingly.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT create the impression that employees' union activities are being kept under surveillance; interrogate employees regarding their union sentiments; threaten employees with reprisal in the event they select a union to represent them; solicit grievances from employees and impliedly promise to remedy such grievances; establish a "hot line" in order to encourage employees to express such grievances; or maintain files on employees reflecting records of tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips in order to discourage employees from selecting a union to represent them for purposes of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remove and discontinue use of the "hot line" installed for the purpose of soliciting grievances from employees.

WE WILL remove and expunge from our records those individual employee files which record tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips, and which were instituted and maintained in order to discourage employees from selecting a union to represent them for purposes of collective bargaining.

IVAN-IVAN AND FOODARAMA, INC.
D/B/A FOODARAMA

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge: Upon charges filed on August 30, 1979, and June 2 and October 8, 1980, by United Food and Commercial Workers Union, Local 698, AFL-CIO-CLC a/w United Food and Commercial Workers International Union, AFL-CIO-CLC (herein called the Union), against Ivan-Ivan and Foodarama, Inc., d/b/a Foodarama (herein called Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued an order consolidating cases, amended consolidated compliant, and notice of consolidated hearing dated November 28, 1980, alleging violations by Respondent of Sections 8(a)(1), (3), and (4) and 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Respondent, by its answer, denied the commission of any unfair labor practices.

A hearing was held before me in Massillon, Ohio, on March 12, 13, and 24, 1981, at which the General Counsel and Respondent were represented by counsel and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the General Counsel and Respondent filed briefs which have been duly considered.

Upon the entire record in this case, and from any observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation, with offices and facilities located in and around Canton, Ohio, is engaged in the retail sale of food and household items. In the course and conduct of its business operations, Respondent annually derives gross revenues in excess of $500,000 and receives goods valued in excess of $25,000 directly from points located outside the State of Ohio. Respondent admits, and I find, that it is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background and Issues Presented*

Based on a charge in Case 8-CA-13142, filed August 30, 1979, a complaint and notice of hearing was issued on October 4, 1979, alleging substantive violations of Section 8(a)(1) and (3) of the Act by Respondent maintaining in effect and discriminatorily enforcing an unlawful no-solicitation rule; disparately enforcing this rule against employee Kathleen Leibler by issuing a written reprimand to her for having violated the rule; and creating the impression through Supervisor Richard Bardine and through Supervisor Millie Dingess that employees' union activities were being kept under surveillance. Following issuance of that complaint, the Union and Respondent entered into a settlement agreement, which was approved by the Regional Director for Region 8 of the Board on March 17, 1980, remedying the alleged unfair labor practices referred to above. Thereafter, on June 2, 1980, the Union filed a charge in Case 8-CA-13885, which was amended on July 28, 1980. By letter dated July 30, 1980, the Regional Director notified the parties that he was setting aside the settlement agreement for reasons more fully discussed below.

On July 31, 1980,[1] the Regional Director issued an order consolidating cases, consolidated complaint and notice of consolidated hearing in Cases 8-CA-13142 and 8-CA-13885. In that consolidated complaint, the Regional Director repeated the alleged violations contained in the earlier complaint and additionally alleged that on November 1, 1979, through David Gregory Copobianco, Respondent interrogated an employee regarding her union sentiments during an employment interview; that on January 24, 1980, through Millie Dingess, Respondent unlawfully interrogated an employee regarding her union activities and stated that Respondent should be informed of future contacts made with the employee by the Union; and, finally, that on April 11, through Dingess, Respondent created the impression among its employees that their union activities were being kept under surveillance. The complaint further alleges that the last mentioned act violated the terms of the settlement agreement previously approved on March 17, and warranted it being set aside. One of the primary issues in this case is thus whether the earlier settlement agreement can and should appropriately be set aside on the basis of the violation alleged to have occurred by Dingess on April 11. This issue must be resolved before any consideration is given to whether Respondent violated the Act by any conduct predating the approval of the settlement agreement.[2]

On October 8, the Union filed a charge in Case 8-CA-14280. On November 28, the Regional Director issued an order consolidating cases, amended consolidated complaint and notice of consolidated hearing in which all three of the above-captioned cases were consolidated for further proceedings. In the amended consolidated complaint dated November 28, the Regional Director repeated the alleged violations of the Act described above and added other alleged violations which are:

On July 7, Respondent, through Dingess, threatened Eilene Harper with economic reprisal and, on July 15,

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[1] All dates hereinafter refer to the year 1980 unless otherwise indicated.

[2] Sec. 101.9(e)(2) of the Board's Rules and Regulations, Series 8, as amended, provides: "In the event the respondent fails to comply with the terms of an informal settlement agreement, the regional director may set the agreement aside and institute further proceedings." It is well established that a settlement may be set aside only where independent evidence of subsequent or continuing unfair labor practices reveals a breach of the agreement. *Tompkins Motor Lines, Inc.*, 142 NLRB 1, 3 (1963), enforcement denied on other grounds 337 F.2d 325 (6th Cir. 1964); *United Dairy Co.*, 146 NLRB 187, 189 (1964). To properly set aside a settlement agreement, the subsequent or continuing unfair labor practices must be substantial. *Coopers International Union*, 208 NLRB 175 (1974); *Medical Manors, Inc. d/b/a Community Convalescent Hospital and Community Convalescent East*, 199 NLRB 840 (1972); *Metropolitan Life Insurance Company*, 166 NLRB 553 (1967).

constructively discharged Harper by transferring her from night shift to day shift because she gave testimony to the Board in Case 8-CA-13885 and/or because of her union activities; on July 21, Respondent, through Store Manager Joseph Martinez, threatened to discharge an employee; on October 6, Respondent, through President Tom Ivan, interrogated an employee concerning her union sentiments and threatened an employee with economic reprisal because of employees' union activities; on October 6, Respondent, through Martinez, interrogated an employee concerning her union sentiments; on October 14, Respondent, through Ivan, solicited grievances from employees in order to discourage them from engaging in union activities; on October 15, Respondent, through Tom Ivan's wife, Marla Ivan, threatened an employee with discharge and other economic reprisal in order to discourage employees from supporting the Union. At the hearing herein, counsel for the General Counsel further amended the amended consolidated complaint by alleging that, during December 1980, Respondent failed to consider employee Jean McNamara for promotion because of her union activities or sentiments.

Respondent denies the commision of the unfair labor practices.

B. *The Evidence*

Employee Jean Cassidy testified that on or about April 11, 1980, she was in the employee breakroom when Supervisor Millie Dingess approached and asked if she could talk to Cassidy.[3] Cassidy replied yes. According to Cassidy, Dingess then started talking to her about the Union, and stated that she did not know if Cassidy was for the Union or if Cassidy signed a card. Dingess stated that she knew a lot of the other employees were not in favor of a union and that the employees who did sign an authorization card in favor of a Union, she (Dingess) knew about. Dingess then went on to say that employees did not need a union and the employees were happy without a union in the store to represent them. Dingess admitted that she had a conversation with Cassidy in the breakroom regarding the Union but stated that she could not recall union authorization cards being mentioned. I credit Cassidy that the conversation took place as related by her.

1. The alleged constructive discharge of Eilene Harper

Eilene Harper was employed by Respondent as a part-time cashier at its Meyers Lake store from August 1978 to August 1980. Harper testified that, at the time she was hired, she informed Respondent's manager, Randy Mellot, that she wanted to work evening hours because she had young children and her husband was available to babysit during the evening. Harper further testified that, during the period of her employment, her work hours were generally 4 p.m. to 9 p.m. during the week and 10 a.m. or 12 noon to 6 p.m. on Saturdays. Harper further testified that she considered shifts which started before 5 p.m. as day shifts because it was those workshifts which required that she obtain babysitting services. I find both of Harper's assertions significant because, as discussed in detail below, the record reflects that, on numerous occasions prior to the time she quit, Harper worked day-time shifts.

Harper testified that on or about February 16, 1980, she was assigned to work at a cash register with a broken conveyor belt. She worked 4 hours at this register prior to her lunch break, and was again assigned to the same register after lunch. Harper complained to Store Manager Martinez, and Martinez accused Harper of refusing to work at that register. Harper responded to Martinez that she had come to him with a legitimate complaint, to which he replied, "If you can't handle the job, maybe you should not be here." I credit Harper that on this occasion she replied to Martinez by stating, "that is why this store needs a Union." This is the first instance of union activity or the expression of a prounion sentiment by Harper to which counsel for the General Counsel points in support of its case. I find this conversation significant not only for that reason, but also because it reflects that without regard to Harper's union sentiments, and before they were ever known to Respondent, Harper did not hesitate to express individual complaints she might have about her work, and Respondent invited her even then to leave if she were not happy.

According to Harper, on February 23, she became ill while working at a cash register. Harper left the register and went to the breakroom. Dingess and four other cashiers were in the breakroom when Harper arrived. According to Harper, Dingess left the room and paged Harper on the intercom system. When Harper went to the office, Dingess threatened to suspend her for a week for leaving her work station without permission. Harper protested the threatened discipline, and Dingess told Harper to go to the work floor. Dingess testified only that she could not recall this incident, and I credit Harper. Thereafter, however, Harper was neither suspended nor reprimanded with regard to this incident.

Harper testified that some time in April 1980, she telephoned Dingess and stated that she would be late for work. According to Harper, she arrived and clocked in at 4:45 p.m., and immediately started working. The fol-

[3] Respondent stipulated that various individuals occupied certain positions, including Tom Ivan, corporate president, Richard Bardine, corporate finance director, and Joseph Martinez, store manager. Respondent also stipulated that David Gregory Copobianco occupied the position of corporate secretary-treasurer from November 1979 to June 1980. Respondent, however, refused to stipulate that the aforenamed individuals are agents and supervisors within the meaning of Sec. 2(11) of the Act. Record evidence clearly reflects that each of the individuals, during all times relevant to these proceedings, possessed the authority to reprimand and/or discharge employees and to grant time off to employees. Accordingly, I find that each of these individuals is a supervisor within the meaning of Sec. 2(11) of the Act.

The General Counsel further alleges, and Respondent denies, that Millie Dingess is a supervisor within the meaning of the Act. Dingess, whose title is head cashier, schedules the work of other cashiers and bag boys; oversees the cashiers in the performance of their duties; participates in interviewing job applicants; and performs cashier duties herself only on an emergency basis. Dingess testified that at the time she interviews prospective employees, she has the authority to make the final decision regarding whether the individual will be hired. Dingess alone has trained almost every cashier now working for Respondent at its Meyers Lake store. Finally, at an employee meeting in October 1980, employees were informed that Dingess was their supervisor and that if they had a problem it should be taken to Dingess. Based on all the above, I conclude that Dingess is a supervisor within the meaning of Sec. 2(11) of the Act.

lowing day, Dingess threatened to give Harper a written warning letter for sitting in the breakroom after clocking in the previous day. Harper denied that allegation, and Dingess told Harper to go to work. A few days later, Dingess again threatened Harper with a warning letter for going to the breakroom at the end of her workshift without clocking out, as was required by company policy. Harper again protested this warning, stating that it was the second time she had been accused of conduct for which she was not guilty. Harper added that Dingess had been harassing her ever since Harper used the word "Union" in the store, and she was tired of being judged on that instead of her work. According to Harper, Martinez and Bardine joined Dingess and expressed a negative opinion about the cost of joining a union and the comparative hourly wage rates between Respondent and unionized stores.

On May 22, Harper began wearing a prounion button to work. She continued wearing the button each workday until August, and apparently was the only employee wearing such a button during that period. This and Harper's statement about the need for a union, quoted above, is the extent of Harper's union activity. There is no evidence that any representative of management ever spoke adversely to Harper or commented on the fact that she wore this union button.

Dingess was scheduled to be hospitalized and off work for a considerable period during the month of July 1980. As is discussed more fully below, Martinez was to and did take over the scheduling of work for cashiers during Dingess' absence. In late June, prior to Dingess' departure, Harper approached Dingess and requested that she be allowed to take a vacation which would include the Fourth of July holiday. Counsel for the General Counsel does not deny that Respondent had a general policy or rule against employees requesting vacations which would encompass a holiday week. In spite of the rule and the resulting inconvenience to Respondent, Dingess granted Harper's request even though a more senior, full-time employee was denied a similar request. Harper was thus granted a vacation from June 30 to July 16.

On July 3, while on vacation, Harper came into Respondent's facility to pick up her paycheck. According to Harper, while in the store, Dingess asked her if she could work the following Saturday. Harper stated that she could not work because she was going out of the State. According to Harper, Dingess then stated, "You know, you broke the law, Eilene. You caused the store a lot of trouble." Harper asked Dingess what she meant by that statement, but Dingess turned around and would not answer Harper. According to Dingess, Dingess was surprised to see Harper in the store that day because Harper had previously said she was going to be out of town. Dingess asked Harper if there were any possibility that Harper could work that afternoon because a number of employees had called off work sick. Harper replied, "No." Dingess then asked Harper if there were any possibility that she could help by working on Saturday, July 5. Harper again said no. According to Dingess, she told Harper that she (Dingess) was in trouble, that she had allowed Harper to take off work during the holiday period and that the store did not have enough coverage. Dingess testified that Harper then left the store. Counsel for the General Counsel alleges that Dingess' statement to Harper is a reference to Harper's union activity and/or to Harper having previously given a statement during the investigation of Case 8-CA-13885. Even by Harper's version, Dingess' statement is so vague as to not clearly refer to anything. Dingess' version and its import is more logical and probable, and I credit that testimony. If indeed there was any reference to Harper having broken a law, it is logical to conclude in the context of this incident that such a statement was a result of Dingess believing that Harper had lied about plans to be out of town in order get time off during a holiday period in violation of company policy. Moreover, I specifically credit Dingess that she said it was she, herself, who was in trouble.

Harper returned to work from vacation on July 17.

As indicated previously, Dingess was hospitalized in July, and Martinez took over the scheduling of work for cashiers. For a 6-week period prior to taking over, Martinez logged total sales and the number of customers during each hour of the 6-day workweek. Thereafter, he made graphs reflecting the peak periods for customers and sales during each working day. After compiling this information, Martinez determined the number of cashiers needed on any given shift. From this, Martinez produced a proposed work schedule for cashiers based on a rotation system. On July 21, Martinez held a meeting with cashiers to explain the schedule. As is conceded by both parties, Martinez received almost unanimous disapproval of his proposed rotating schedule from the cashiers, who desired a schedule based on seniority which would accord them the same days off work each week. Harper alleges that during this meeting she asked Martinez why her hours had been cut so much more than the other cashiers. Martinez allegedly replied that he only had to schedule her for 13.5 hours per week. Even if Harper is credited on this point, I find it to be insignificant because her hours had not in fact been significantly reduced below her average as is discussed below. At the conclusion of the meeting, Martinez stated that he would revise the schedule based on seniority.

Harper testified that, as the July 21 meeting was breaking up, she approached Martinez and asked how the new schedule would affect her as she was low in seniority. I credit Harper that she told Martinez she could not work the day shift because of difficulty she encountered in securing a babysitter during the summer months. Martinez informed Harper that he could not work the schedule around her and that the store was his main concern. Harper told Martinez that she wanted only the busiest hours, those that the other cashiers did not want. Martinez replied that she would have to work the hours he wanted her to work and if she could not work those hours she would not be there.

After the meeting broke up and as Martinez was leaving the store, he was approached by cashier Pat Furgeson.[4] According to Furgeson, she and Martinez dis-

[4] Furgeson testified that she had a conversation with Martinez some time in July 1980, as she was leaving work. Furgeson could not recall the date of the conversation but stated that it was after Harper returned from vacation. Martinez testified that the conversation occurred immediately after the cashier's meeting on July 21, and I credit Martinez.

cussed the hours and schedule changes for the cashiers. Furgeson alleges that during the conversation Martinez stated that Harper was lucky to have the hours she was assigned, that she was a good cashier, and that it would be hard to get rid of her. Martinez testified in part that he told Furgeson he could not get rid of Harper even if he wanted to. Counsel for the General Counsel argues that Martinez did not explain in his testimony how getting rid of Harper came up in the context of the conversation. Contrary to the General Counsel's argument, Martinez explained in considerable detail how both the topic and the statement came up, and I credit Martinez. Martinez testified that Furgeson approached him and asked him if there was anything he could do or would do about Harper disrupting the cashiers at the front of the store and harassing Furgeson. Furgeson related to Martinez that she was referring to a prior incident when Martinez had terminated a cashier for a shortage in her cashbox exceeding $100. Furgeson explained to Martinez that Harper had questioned Furgeson and asked if she (Furgeson) did not think it strange that at the same time Martinez needed money to repair his car there was a sudden gross shortage. Harper also mentioned something to Furgeson about the terminated employee collecting unemployment, and Martinez replied to Furgeson that he was not aware the employee was collecting unemployment. Furgeson apparently did not like the innuendo of Harper's question, and it was this that prompted Furgeson to complain to Martinez on the evening of July 21. Martinez responded to Furgeson that Harper was a good cashier and that there was nothing he could do. Martinez added that, as long as Harper stayed within the framework and policy of the Company, she was on solid ground. Martinez then added, "I couldn't get rid of her if I wanted to." Rather than evidencing a threat to discharge Harper, as alleged by the General Counsel, I find this statement to be a positive recognition by Martinez of Harper's work performance.

Following the July 21 meeting with cashiers, Martinez developed a work schedule which he posted on Friday, July 25, covering the week of July 28 to August 2. On this schedule, Harper was assigned to work from 11:30 a.m. to 7 p.m. on Thursday, July 31; from 11 a.m. to 8 p.m. on Friday August 1; and from 9:30 a.m. to 6:30 p.m. on Saturday, August 2. This schedule allotted Harper 23 working hours. On Friday, July 25, Harper had a conversation with Martinez which ultimately resulted in her quitting. According to Harper, she approached Martinez and told him that she could not work the scheduled hours because of babysitting problems. Martinez replied that he had a lot of cashiers coming in to ask him for changes in the schedule and that he could not please everyone. Harper protested that Martinez granted schedule changes for other cashiers, and that she wanted the hours she had always worked. Martinez allegedly told Harper that if she did not like the hours assigned she could quit; Harper responded that she was giving a week's notice of her resignation. Harper testified that Martinez then asked if there was any particular reason for the resignation, and Harper replied that she could not work the hours assigned to her. Harper further testified that Martinez asked if she had another job and that she responded she did not, but she was exploring the possibility of a part-time job driving a schoolbus. Martinez testified that when Harper came into his office she immediately announced her resignation. According to Martinez, when he asked about her reasons for quitting, Harper stated that she found another job more suitable to the hours she would like to work. Martinez then asked for a letter of resignation. When Harper allegedly asked what she would write in the letter, Martinez told her to state that she had found another job.

On August 1, 1980, Harper submitted a letter of resignation to Martinez, which states in *toto*:

> I, Eilene F. Harper, resign my position as cashier this day of August 1, 1980 with one week's notice already given on July 26, 1980.
>
> My reasons for leaving are I was refused evening hours and hours I was given was difficult to work because of my family.

I credit Harper's version over that of Martinez with regard to her conversation on July 25. I further find that in telling Martinez she wanted the hours she had "always worked" and that she could not work the hours assigned to her, Harper undoubtedly expressed what was contained in her letter of resignation that the hours she had been assigned were difficult to work because of her family considerations. Harper's last day of work was August 1, 1980.

2. Events of October 1980

On October 6, cashier Jean Gifford, Jacquelyn Wade, Pat Furgeson, and Joyce McNamara wore prounion buttons to work. McNamara testified that she had worked for approximately 3 hours when she was informed that Respondent's president, Tom Ivan, wanted to speak to her in the office. After arriving at the office, and exchanging greetings with Ivan, Ivan stated to McNamara, "what I wanted to talk to you about," indicating with his hand toward McNamara's union button, McNamara responded that wearing the button was not something she had just done on the spur of the moment, that she had thought about it a long time, but had ultimately made up her mind as a result of Betty Brown, a long-term employee at another of Respondent's stores, being fired. Ivan responded that Brown had been fired for what the Company believed were bona fide reasons and employees should not question the judgment of management when something is done for betterment of the Company. McNamara stated that she was naturally worried about her job security and her position with Respondent after Brown, who had been employed for 15 years, was suddenly discharged. Ivan responded that McNamara did not have to worry about her job as long as she was doing her job in the manner she was then performing. Ivan added, "the Union is not going to protect you or anybody that doesn't do a good job for the company. The Union won't protect your job any more than your job is already protected." McNamara testified that the meeting was lengthy, lasting approximately 1-1/2 hours. During this time, Ivan and McNamara discussed store

policy in detail. Ivan also stated in part that Respondent was paying almost the same as union scale and that the Company had come a long way since McNamara started working for it. McNamara agreed. During this discussion, McNamara also told Ivan, "Tom, you need to talk to your employees. You need to get to know them." Ivan responded that he would like to do that. As the conversation was concluding, Ivan remarked to McNamara, "I don't know what I will become or what I will be like when or if a Union ever gets in this store. I cannot honestly say what I will do or what I will be like."

Ivan admitted having this converation with McNamara. Ivan testified that he was shocked when he saw McNamara wearing a union button because he had acted favorably on all of McNamara's previous complaints. Ivan testified that he could not understand why McNamara needed a spokesman when company officials to whom she had registered complaints were readily available, and admitted that he asked McNamara why she was interested in having someone else be her spokesman, rather than her speaking to Ivan himself. I completely credit McNamara's testimony with regard to this conversation, including Ivan's own admission regarding it.

Also on October 6, Store Manager Martinez asked employee Jacquelyn Wade to step into the office because he wanted to talk to Wade about why she was wearing a prounion button. According to Wade, when she stepped into the office, Martinez said he could not understand why Wade would want to wear a union button since Wade was such a longtime employee with Respondent. Martinez then said he was hurt that she had it on. Wade told Martinez that because of the discharge of employee Brown and other things which had happened to her personally, she, Wade, felt that employees' jobs were very insecure. Wade added that she hoped if nothing else the button would bring attention to employee problems from management and Respondent's owners. Wade testified that the conversation lasted approximately an hour. Martinez admitted having had this conversation with Wade, including the fact that he told Wade he was disappointed that she was wearing a union button. I credit fully Wade's version of this conversation.

On October 14, in response to a demand from employees, Respondent held a meeting with cashiers. At the beginning of the meeting, conducted by Ivan and Martinez, Ivan asked the cashiers to air any grievances they might have. He distributed pencils and paper to employees, and invited them to write any grievances they might have if they did not want to express them aloud. One of the employees present commented that, when grievances were expressed to supervisors, they are taken on a personal rather than a business level, and therefore employees were reluctant to express such grievances. Ivan replied that supervisors would be trained to handle problems as they arise. Ivan encouraged employees that, if they were not satisfied with the response from the supervisor, they should feel free to pursue the matter with higher management including, if necessary, Ivan himself. Ivan stated that he could not understand why any employee would want a union and why they needed a third party to do their bargaining. Ivan informed the employees that he would establish a "hotline" in the employee breakroom so that employees could mail anonymous post cards or telephone Ivan personally regarding any complaint. Also during this meeting, Store Manager Martinez informed employees that Respondent was going to begin keeping files regarding the cashiers. A file would be maintained on each employee recording the employee's tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips. After this meeting was over, according to the testimony of employee Gifford, Martinez had a brief conversation with her in the presence of employee McNamara during which he stated that he, Martinez, hated their union buttons.[5]

Martinez admitted that he informed the cashiers he was going to begin keeping such files. He further admitted that, prior to the meeting, such files were not kept, and following the meeting such files have been and continued to be kept. Martinez testified that the reasons for having begun the file system were that cashiers had given him the impression they were concerned about job security, and that the keeping of such files would assure employees that no arbitrary and undocumented action might be taken against them.

Ivan admitted informing employees of his intention to establish a "hot line." Subsequent to the October 14 meeting, a "hot line" poster was placed on the wall in the employee breakroom. In a pocket on the poster were post cards that employees could use to anonymously express any complaint they might have. Also on the poster was Ivan's home telephone number so that employees might telephone Ivan directly with regard to any complaint. Ivan testified that he had always had an "open door" policy encouraging employees to express the complaints they might have, but further admitted that no poster of the kind described above existed prior to the October 14 meeting. Ivan testified that he promised and established the "hot line" poster in order to illustrate to employees that something was coming out of the October 14 meeting and that employees could get results from Respondent. At the time of the hearing herein, the poster as described above was still in use.

On October 15, while employee McNamara was working at her assigned cash register, Marla Ivan, the wife of Respondent's president, Tom Ivan, came to the line at McNamara's register. According to McNamara, she greeted Marla Ivan by stating, "how are you?" Marla Ivan replied, "I was fine until I saw your union button." Mrs. Ivan then added, "Even if they win, you lose." Mrs. Ivan was not called as a witness by Respondent, and McNamara's testimony is uncontroverted. No reason has been advanced to discredit McNamara, and I find none. I conclude that Marla Ivan made the statements attributed to her by McNamara.

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[5] My findings with regard to this meeting are based on a composite of the testimony of employees Wade and Gifford, whom I credit. Ivan and Martinez both admit that the meeting occurred substantially as recited by Wade and Gifford, and I credit their admissions with regard to various events regarding this meeting and further events which flowed from it, as further described herein.

3. The failure to promote Joyce McNamara

McNamara has been employed by Respondent as a cashier since 1973. For approximately the past 3 years, McNamara has assisted in performing office work on a part-time basis in addition to her duties as a cashier. McNamara's office duties include opening and closing the store, performing pickups of cash from cashiers, counting coupons, and providing customer service. McNamara, however, is not the only employee who has performed such work on a part-time basis, for the record reflects that such work is divided among several cashiers.

In early December 1980, McNamara learned that the assistant head cashier at Respondent's Meyers Lake store had accepted a position as head cashier at another of Respondent's stores. At that same time, McNamara also observed that Nancy Weber, also a cashier, had begun to work in the office on a part-time basis as well. Prior to this time, in mid-October, McNamara had asked Martinez to be relieved of working in the office on a part-time basis, and, as a result, had not worked in the office for approximately 3 or 4 weeks; i.e., until approximately mid-November 1980. Thereafter, McNamara again agreed to work in the office and continued to be assigned part-time work as before. Upon seeing Weber working in the office, McNamara approached Store Manager Martinez and asked if Weber were being trained to replace her, McNamara, in the office. Martinez replied no, that Weber was being trained because of Respondent's need for additional office employees. During the same conversation, as testified to by McNamara, Martinez observed that McNamara was no longer wearing the union button referred to above. McNamara responded that she had decided not to wear the button because she wanted to give Respondent "a chance to do what was right by their employees."

During approximately the same time, McNamara gave Respondent a written note in which she informed Respondent that she wanted to work only 30 hours per week, "no more, no less." This position remained unchanged until December 29.

On December 29, McNamara approached Martinez and submitted a written request to Martinez to be considered for the job of assistant head cashier soon to be vacant. McNamara told Martinez that she did not know if the job of assistant cashier was in fact open but that she had heard a rumor to that effect. Martinez told McNamara that that was true, and that he would take McNamara's request to Ivan. During this conversation McNamara also informed Martinez for the first time that she was willing to work more than 30 hours per week in order to be considered for the position of assistant head cashier which might require that she work as many as 40 hours per week.

Counsel for the General Counsel argues that McNamara heard nothing from Martinez until she approached him in late January 1981, to confirm a rumor that Weber had been selected for the position of assistant head cashier. My analysis of the record, however, leads me to the conclusion that only a week to 10 days passed before McNamara approached Martinez. When McNamara approached Martinez to confirm this rumor, McNamara asked Martinez if it were true that Weber had been given this position. Martinez replied that Weber had been given the position. Martinez was then asked why the position had been given to Weber rather than McNamara. Martinez replied that the decision had been made by Respondent's president, Tom Ivan, and that that was the way he wanted it. When McNamara pressed further for the reason, Martinez informed McNamara that Ivan believed Weber to be more qualified; that Weber got along with other employees and was pleasant to customers; and that Weber was an all-round better employee for the position. During this conversation, according to McNamara whom I credit, Martinez also told McNamara that one of the reasons she had not been given the position was that she was not "loyal" enough for the position. McNamara pressed Martinez about his meaning of the word "loyal." Martinez stated, "what I mean, for example, if Tom [Ivan] made a decision in the office, would you abide by it?" McNamara responded, "Yes, I would have to abide by it but not necessarily agree with it. If it was in regard to something I knew was not true about one of the other girls, or people, I would not be able to go along with him, no. Tom Ivan is not God. I only have one God." Martinez responded only by saying that these were the reasons Ivan had given him for not selecting McNamara.

Martinez and Ivan confirm that Martinez informed Ivan of McNamara's request to be considered for the assistant head cashier position. Ivan, whom I also credit with regard to this incident, further testified, however, that, at the time Martinez informed him that McNamara desired to be considered for the position, he had already made the decision that Weber would receive the promotion.

IV. ANALYSIS AND CONCLUSIONS

For the reasons expressed above, I credit employee Jean Cassidy that on April 11, 1980, Supervisor Millie Dingess initiated a conversation with her about the Union. During this conversation, Dingess stated in part that she, Dingess, knew the identity of employees who signed authorization cards in support of the Union. It has long been recognized, and I conclude, that such a statement necessarily implies that employees' union activities are being monitored closely by their employer and tends to create the impression that such activities are being kept under surveillance. I conclude that, by this statement, Respondent violated Section 8(a)(1) of the Act.

With regard to the alleged constructive discharge of employee Eilene Harper, counsel for the General Counsel points to two instances of significant union activity by her preceding her termination. On February 16, Harper stated to Store Manager Martinez in effect that the store needed a union to represent employees. Also, from approximately May 22 until the time of her termination, Harper wore a prounion button to work on a daily basis. In late June, during the period of time when Harper wore this button daily, Harper requested and was granted permission by Supervisor Dingess to take a vacation which overlapped and included the Fourth of July weekend. I find it significant that Harper was granted this vacation request in spite of there being a store policy

against employees taking vacations during holiday periods and the resulting inconvenience to Respondent by it granting Harper's request. Further, another employee more senior than Harper was denied a similar request for vacation including this same Fourth of July holiday. On July 3, while Harper was on vacation and thought to be out of town by Dingess, Harper came into Respondent's store to pick up her paycheck. Counsel for the General Counsel alleges that during a conversation between Dingess and Harper while Harper was in the store, Dingess threatened Harper by stating, "you know you broke the law. You caused the store a lot of trouble," allegedly referring to Harper's union activity or her having given a prior statement to the Board. For reasons more fully expressed above, however, I find that, in asking Harper to work during the vacation period she had already been granted, Dingess stated that she, Dingess, was in trouble and that the store did not have enough coverage by cashiers. Consequently, I shall dismiss this allegation in the complaint.

Counsel for the General Counsel alleges that on July 21, 1980, Store Manager Martinez impliedly threatened to discharge Harper. I have found, however, that on this occasion employee Furgeson asked Martinez to do something about Harper bothering Furgeson. Martinez replied that Harper was a good cashier and that there was nothing he could do. Martinez then stated that as long as Harper stayed within the framework and policy of the Company, she (Harper) was on good ground. Martinez added, "I couldn't get rid of her if I wanted to." Rather than evidencing a threat to discharge Harper, I find this statement to be a positive recognition by Martinez of Harper's work performance. Accordingly, I shall dismiss that allegation of the complaint.

Counsel for the General Counsel further alleges that Harper was forced to quit, i.e., constructively discharged, by having her schedule changed such that she was assigned to work days rather than nights. In her testimony, Harper appeared to give two reasons for having quit: first, that her hours were drastically reduced, and, second, that she was assigned to work days rather than nights, thus requiring that she obtain babysitting services. Harper testified that in the last 2 weeks of June her schedule was reduced from 36 to 24 and then to 14 hours per week. The work schedules show, however, that while Harper was scheduled to work only 17.5 hours during the week of June 16–21, she was scheduled for 27 hours during the week of June 23 to 28. A review of Harper's timecards shows that during 27 calendar weeks prior to mid-June 1980, excluding completely two calendar weeks in January when Harper did not work at all due to apparent hospitalization, Harper worked an average of only 23.7 hours per week. Further, the timecards reflect that in the 27-week period referred to above, Harper worked more than 30 hours in only two of those weeks. Harper admitted that all employees' work schedules were reduced during the month of June due to a general business slowdown. Nevertheless, contrary to Harper's assertion, her own work schedule does not appear to have declined substantially from her average. In the short 3-day workweek after her return from vacation she worked 15.75 hours; in the following week of July 21 to 26 she worked 27 hours; and in the last week of her employment after she had given notice of her intention to quit she worked 23 hours. I conclude that in the last 5 weeks of her employment, Harper's work schedule was not reduced signifcantly below her actual average work schedule.

Counsel for the General Counsel admits that Respondent did not institute the rotating schedule system for discriminatory reasons. Rather, she argues that Respondent seized on the opportunity provided to effectuate a change in Harper's schedule and rid itself of a union supporter. The question remains, however, whether Respondent in fact effectuated a change in Harper's normal schedule, whether that change was an intentional act on Respondent's part in order to discriminate against Harper, and, if it were, whether the change was so significant as to warrant Harper quitting such that it might be construed as a constructive discharge.

Harper testified, and counsel for the General Counsel argues, that she worked primarily from 4 p.m. to 9 p.m. on weekdays and during the day on Saturday. A review of the work schedules for 17 calendar weeks from March 31 to July 21, 1980, reflects that Harper did work most often from 4 p.m. to 9 p.m. on weekdays, but that Harper was scheduled to work a weekday shift which started prior to 3 p.m. during eight of those weeks. During another week, she was scheduled to work two such day-time shifts. Counsel for the General Counsel overlooks this fact that, during more than 50 percent of the 17 calendar weeks preceding the time she quit, Harper was scheduled to work at least one day-time shift which started before 3 p.m. and which required that she obtain babysitting services. Simply stated, I concluded that while Harper most often worked the 4 p.m. to 9 p.m. shift, she was also called upon on a regular basis to work other shifts as the need arose. When Supervisor Dingess was hospitalized in July 1980, her regular task of scheduling the work of cashiers was taken over temporarily by Store Manager Martinez. I conclude that the work schedule produced by Martinez was the result of his desire and attempt to schedule work in the most scientific, functional manner possible for Respondent and not the result of any animus harbored by him toward Harper or any other employee because of their union sentiments. Consequently, I conclude that Harper having quit as a result of the schedule assigned to her may not be considered a constructive discharge in violation of Section 8(a)(3) of the Act, and I shall dismiss that allegation of the complaint.

On October 6, 1980, four employees, including Joyce McNamara and Jacquelyn Wade, wore prounion buttons to work. On that day, Respondent's president, Tom Ivan, spoke to McNamara about the buttons and the Union generally in a conversation which he initiated by stating, "what I wanted to talk to you about" indicating with his hand toward the button worn by McNamara. I conclude that such an open-ended introduction necessarily placed McNamara in the position of having to respond and effectively constituted interrogation of her about the reasons for wearing the button. Further, Ivan admits asking McNamara why she would be interested in having a

spokesman represent her. By both of these acts, Ivan interrogated McNamara about her union sentiments in violation of Section 8(a)(1) of the Act. This same conversation between Ivan and McNamara was concluded by Ivan stating, "I don't know what I will become or what I will be like when or if a Union ever gets in this store. I cannot honestly say what I will do or what I will be like." I conclude that this statement constitutes a veiled threat by Ivan that things may become unpleasant for employees in the event they select a union to represent them. As such, I find this statement to be an additional violation of Section 8(a)(1) of the Act. Also on October 6, Store Manager Martinez interrogated employee Wade about her reasons for wearing the prounion button and stated in part that he was "hurt" and/or "disappointed" that Wade was wearing this button. I conclude that Martinez' actions in this regard constitute further violations of Section 8(a)(1) of the Act.

On October 14, 1980, Ivan and Martinez held a meeting with cashiers. The primary purpose for this meeting, as reflected by testimony, was to invite cashiers to air any grievances they might have against Respondent. The soliciting of grievances carries with it an implied promise to remedy those grievances. Here, however, Respondent went even further, telling employees that supervisors would be trained to handle problems as they arose and that, if employees were not satisfied with a response from their supervisor, employees should pursue the matter with higher management, including Ivan. Ivan even went so far as to set up a "hot line" for employees to express those grievances. Ivan admits that the purpose for establishing this "hot line" was to illustrate to employees that they could get results from Respondent. I conclude that by Ivan soliciting grievances at this meeting and thereafter establishing the "hot line," Ivan interfered with employees' rights in violation of Section 8(a)(1) of the Act. During this same meeting Store Manager Martinez informed employees that he was going to begin keeping files regarding cashiers in which information would be maintained regarding tardiness, absenteeism, overages, shortages, complaints, and returned sale slips. Following the meeting, Martinez did commence keeping such files. I conclude that by his statements regarding these files during the meeting, and by his actions thereafter in maintaining these files, Martinez has interfered with employee rights in violation of Section 8(a)(1) of the Act.

On October 15, 1980, Marla Ivan, wife of Tom Ivan, was in Respondent's facility to purchase some groceries. While going through the checkout line operated by Joyce McNamara, Marla Ivan stated that she was fine until she had seen McNamara's union button. Ivan also stated, "Even if they win, you lose." Counsel for the General Counsel alleges these remarks to be violations of Section 8(a)(1) of the Act. Other than establishing that Marla Ivan is the wife of Tom Ivan, however, counsel for the General Counsel has completely failed to produce any evidence that Marla Ivan was an agent of Respondent. No evidence has been offered to suggest that Marla Ivan was employed by Respondent. Further, no evidence has been produced showing that Marla Ivan is an officer or holds any ownership interest whatever in Respondent corporation. Consequently, I must conclude that counsel for the General Counsel has failed to establish that the actions of Marla Ivan on this occasion may be attributed to Respondent, and I shall dismiss that allegation of the complaint.

With regard to Respondent's alleged failure to promote Joyce McNamara to the position of assistant head cashier because of her union sentiments, the record reflects that McNamara became aware of the upcoming vacancy in this position in early December 1980. Employee Nancy Weber, the individual to whom the promotion was given, began to work in the office on a part-time basis in early December. I have credited Ivan that he already made the decision to promote Weber when, on December 29, McNamara submitted a written request to be considered for the position. In arriving at this conclusion, I also note that it is supported by the fact that McNamara waited almost a month upon learning of the upcoming vacancy before expressing her desire to be considered for the job. Prior to December 29, McNamara had expressed to Respondent in writing that she desired only 30 hours employment per week—"no more, no less." The position of assistant head cashier necessarily required work of more than 30 hours per week and sometimes required as much as and even more than 40 hours per week. It was not until December 29, when McNamara submitted a written request to be considered for the position that she expressed a willingness to work more than 30 hours per week.

When McNamara learned that she had not gotten the position of assistant head cashier and that Weber had received the promotion, McNamara confronted Martinez. Martinez informed McNamara that Weber had received the promotion because Ivan believed Weber to be more qualified, to get along with employees and customers alike, and to be an all-round better employee for the position. Martinez also informed McNamara that Ivan did not believe McNamara to be "loyal" enough for the position. Counsel for the General Counsel places great weight on Martinez' use of the words "loyal," arguing that this evidences an antiunion motive on Ivan's part for not giving the position to McNamara. Counsel for the General Counsel, however, appears to totally overlook the fact that Martinez' use of the word "loyal" was fully explained in the context of the conversation between McNamara and Martinez. Careful analysis of that conversation reveals that Ivan, as expressed by Martinez, was primarily concerned that McNamara might refuse to obey orders if she did not agree with them. I also find it significant that in replying to Martinez, McNamara in effect admitted that she would not follow orders from Ivan if she "knew" him to be wrong. From the context of the conversation, it is clear that Ivan's concern with loyalty, and McNamara's own understanding of that, dealt exclusively with her willingness to follow orders and had no reference to her union sentiments. Consequently, I conclude that Respondent did not fail to promote McNamara or consider her for promotion to the position of head assistant cashier for any reason proscribed by the Act, and I shall dismiss that allegation of the complaint.

V. THE SETTLEMENT AGREEMENT

Counsel for the General Counsel argues that the settlement agreement in Case 8-CA-13142 approved by the Regional Director on March 17, 1980, can and should appropriately be set aside. Although the complaint alleges several violations of the Act between March 17 and July 30, 1980, when the Regional Director set aside that settlement agreement, the complaint itself refers to only one incident as the basis for the Regional Director's action. That one incident is a statement by Supervisor Dingess on April 11, to employee Jean Cassidy which created the impression that employees' union activities were being kept under surveillance. I have previously found that allegation to have merit. Additional alleged violations of the Act between March 17 and July 30, which might have been relied on by counsel for the General Counsel, but which were not referred to in the complaint, I found to lack merit and recommended their dismissal. Therefore, the issue presented is whether Dingess' statement to employee Cassidy on April 11 is itself sufficient to warrant setting aside the settlement agreement.

In framing this issue, I have purposely refused to consider any alleged violations of the Act which predate approval of the settlement agreement on March 17, including the alleged acts of interrogation by Copobianco on November 1, 1979, and by Dingess on January 24, 1980, even though they postdate the original complaint which issued in Case 8-CA-13142 on October 4, 1979, and even though they may not have been specifically referred to in the settlement agreement approved on March 17. I have done so because it is generally recognized that presettlement conduct is barred from subsequent litigation unless the alleged violation was not known to the General Counsel, and not readily discoverable, or was specifically reserved for further litigation. *Laminite Plastics Mfg. Corp.*, 238 NLRB 1234 (1978); *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978).[6] In this case, counsel for the General Counsel makes no claim that alleged violations predating approval of the settlement agreement were not known to or readily discoverable by the General Counsel's staff, and there is nothing to suggest that such matters were specifically reserved for further litigation.

I conclude that Dingess' statement to employee Jean Cassidy on April 11 is not sufficient to warrant setting aside the settlement agreement. While it is true that, in the conversation with Cassidy, Dingess did make a statement which must be characterized as creating the impression that employees' union activities were under surveillance, this single violation may hardly be considered substantial. I note that in the conversation with Cassidy, Dingess also stated that she did not know whether Cassidy was for or against the Union, and made no attempt to interrogate Cassidy with regard to her own union sentiments. Dingess simply stated that she knew the identity of other employees who signed authorization cards in support of the Union, which may well have been a statement of fact, albeit one which it has been found tends to create the impression of surveillance. I find that Dingess' statement to Cassidy was a relatively isolated incident which was not followed by any further unfair labor practices on the part of Respondent for several months after the earlier settlement agreement was set aside. Consequently, I conclude that Dingess' action on April 11 is not itself sufficient to warrant the Regional Director setting aside the settlement agreement, and I shall recommend that the earlier settlement agreement be reinstated. *Cooper's International Union, supra; Community Convalescent Hospital, supra; Metropolitan Life Insurance, supra.* In arriving at this conclusion not to set aside the earlier settlement agreement, I also note that my order herein would not be materially modified or changed by the inclusion of alleged presettlement violations. See *The Lion Knitting Mills Co., supra.* Consequently, I conclude that there would be no useful purpose in setting aside that settlement agreement.

VI. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in sections III and IV, above, occurring in connection with its operations described in section I above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VII. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent, Ivan-Ivan and Foodarama, Inc., d/b/a Foodarama, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers Union, Local 698, AFL-CIO-CLC a/w United Food and Commercial Workers International Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By creating the impression that employees' union activities were being kept under surveillance; interrogating employees regarding their union sentiments; threatening employees with unspecified reprisal in the event they select a union to represent them; soliciting grievances from employees and impliedly promising to remedy such grievances; establishing a "hot line" in order to encourage employees to express such grievances; and maintaining files on employees reflecting records of tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips in order to discourage employees

[6] I find this case distinguishable from *Laminite Plastics Mfg. Corp.*, 238 NLRB 888 (1978). That case dealt with the discharge of an individual whose identity was completely unknown to counsel for the General Counsel at the time it entered into the settlement agreement, whereas the newly alleged violations in this case relate to individuals whose identity was known to counsel for the General Counsel and to alleged acts similar in nature to those alleged in the earlier complaint. See *The Lion Knitting Mills Company*, 160 NLRB 801, 803 (1966).

from selecting a union to represent them for purposes of collective bargaining, Respondent has restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. Respondent has not otherwise violated the Act as alleged in the complaint, and those portions of the complaint shall be dismissed.

5. The unfair labor practices which Respondent has been found to have engaged in, as described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[7]

The Respondent, Ivan-Ivan and Foodarama, Inc., d/b/a Foodarama, Canton, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Creating the impression that employees' union activities are being kept under surveillance, interrogating employees regarding their union sentiments; threatening employees with reprisal in the event they select a union to represent them; soliciting grievances from employees and impliedly promising to remedy such grievances; establishing a "hot line" in order to encourage employees to express such grievances; and maintaining files on employees reflecting records of tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips in order to discourage employees from selecting a union to represent them for purposes of collective bargaining.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act:

(a) Remove and discontinue use of the "hot line" installed by Respondent for the purpose of soliciting grievances from employees.

(b) Remove and expunge from its records all files maintained on employees reflecting tardiness, absenteeism, overages, shortages, customer complaints, and returned sales slips.

(c) Post at its Meyers Lake facility located in Canton, Ohio, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[7] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."